

Application No: 10/670,494
Attorney Docket 1-24057

REMARKS

This amendment is submitted in response to the Official Letter, dated September 28, 2004.

Claims 2, 3, 5, 8, 10, and 13-15 have been cancelled. Claim 6 has been amended. Claims 16-28 have been added. No new matter has been introduced. Support for the amended claims and the new claims is found throughout the specification, claims, and drawings as originally filed. Twenty (20) claims are pending and remain for consideration. Favorable reconsideration of the pending claims and further examination of the application is respectfully requested.

IN THE CLAIMS

35 U.S.C. § 102

Claims 1-4 and 8-15 are rejected under 35 U.S.C. § 102, as anticipated by U.S. Patent No. 5,743,545, issued to Kunze et al. Claims 2, 3, 8, 10, and 13-15 have been cancelled without prejudice or disclaimer. This rejection of the claims is respectfully traversed.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the applicant's claim. *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990).

Claim 1 is directed to a wheel mounting assembly for mounting a wheel of a wheelchair to a frame part that includes an upper side frame member and a lower side frame member. The wheel mounting assembly comprises a connecting member and a wheel-mounting member. The connecting member extends generally upwardly and downwardly between the frame members and is adapted to be secured to the frame members. The wheel-mounting member extends *adjacent* the connecting member and

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is secured to the connecting member and the side frame members. The wheel-mounting member has at least one formation for supporting an axle of the wheel.

Kunze discloses a connecting member and a wheel-mounting member that are the same. The two are not *adjacent* one another, as recited in claim 1. Moreover, the wheel-mounting member is not *secured* to the connecting member, as recited in claim 1.

In the Official Letter dated September 28, 2004, the Examiner refers to an attachment as Attachment A. This attachment was not provided with the Official Letter. The omission of this attachment was brought to the Examiner's attention in a telephone conversation between the Examiner and Applicants' representative on January 18, 2005. The Examiner indicated that the attachment identifies member (12) in Fig. 2 of Kunze as a connecting member and member (12b) as a wheel-mounting member. In doing so, the Examiner concurs that the wheel-mounting member (12b) in the Kunze patent is part of the connecting member (12). If this holds true, the wheel-mounting member cannot be adjacent or secured to the connecting member.

Since the Kunze patent fails to disclose a wheel-mounting member adjacent to and secured to a connecting member, claim 1 should be allowable as written. Favorable reconsideration of claim 1 is respectfully requested.

Claims 4 and 9 depend from claim 1 and should be allowable for at least the same reasons as claim 1. Claim 4 recites a wheel-mounting member that is adapted to be secured in alternative forward or rearward positions relative to the connecting member. The Examiner states that the wheel-mounting member in the Kunze patent need only have the ability to be secured in alternative forward or rearward positions relative to the connecting member, due to Applicants' use of the words "adapted to." However, since the wheel-mounting member is the connecting member, the wheel mounting member in the Kunze patent cannot be secured in alternative forward or rearward positions relative to the connecting member. For this additional reason, claim 4 should be allowable as written.

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Claim 9 recites a connecting member is adapted to receive a back post member of a wheelchair seat. The Examiner states that the connecting member in the Kunze patent need only have the ability to receive a back post member of a wheelchair seat. Although the Kunze discloses recesses (12a) for fitting a backrest (3), the connecting member (12) in the Kunze patent is not disclosed as having any portion with the ability to receive a back post member. For this additional reason, claim 9 should be allowable as written.

Although cancelled, claim 2 recited two wheel-mounting members. Kunze discloses a single wheel-mounting member 12, not two wheel-mounting members, as was recited in claim 2. Moreover, the wheel-mounting members that were recited in claim 2 were provided on opposing sides of the connecting member. As stated above, Kunze discloses a wheel-mounting member that is a connecting member. Kunze fails to disclose a wheel-mounting member on opposing sides to the connecting member. For this additional reason, claim 2 should have been allowable as written.

Claim 11 is directed toward a wheelchair comprising generally comprising a side frame having a frame part and a wheel mounting assembly for mounting a wheel to the frame part. The frame part has an upper side frame member and a lower side frame member. The wheel mounting assembly generally comprises a connecting member and a wheel-mounting member. The connecting member extends generally upwardly and downwardly between the frame members and is adapted to be secured to the frame members. The wheel-mounting member extends adjacent the connecting member and is secured to the connecting member and to the side frame members. The wheel-mounting member has at least one formation for supporting an axle of the wheel.

Claim 11 should be allowable for at least the same reasons as claim 1, as set forth above. Favorable reconsideration of claim 11 is respectfully requested.

Claim 12 depends from claim 11 and should be allowable for at least the same reasons as claim 11. In addition, claim 12 recites upper and lower frame members each having an external cross-sectional shape which is non-circular and includes

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circumferentially spaced portions of a circumscribing circle. The Kunze patent fails to disclose a frame member that includes circumferentially spaced portions of a circumscribing circle. As clearly indicated in Fig. 3 of the Kunze patent, the frame member (13) does not include circumferentially spaced portions of a circumscribing circle. For this additional reason, claim 12 should be allowable as written.

Although cancelled, claim 15 recited at least one receiving formation of a connecting member that has a slot. The Kunze patent fails to disclose a slot as was recited in claim 15. For this additional reason, claim 15 should have been allowable as written.

New Claims

Claims 16-28 have been added. Kunze fails to disclose or teach the invention set forth in these claims. Consequently, these claims should be allowable as written. Favorable consideration of these claims is respectfully requested.

Allowable Subject Matter

Applicants acknowledge that claims 5-7 have been indicated as allowable if rewritten in independent form. Claim 5 has been cancelled and claim 6 has been amended to include the language of claim 5. Claims 6 and 7 will be amended in independent form if the claims from which they depend cannot be placed in condition for allowance.

In view of the amendments and above remarks, it is believed that the application is in condition for allowance. Accordingly, a Notice of Allowance is respectfully requested.